

### **III. REMARKS**

The Examiner states on page 2 of the Office Action mailed August 12, 2003 that claims 1, 5-7, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically the Examiner states that claim 1 appears to be incomplete for lacking the structural relationship between each of the plurality of hoppers.

In response to the Examiner's rejection, Applicant has herein amended line 3 of claim 1 to read "a plurality of hoppers in a linear arrangement" and thereby include the structural relationship between each of the hoppers.

The Examiner further states on page 3 that "a passageway between each of said hoppers and said nozzle" is indefinite because each nozzle associates with one hopper therefore there cannot be a passageway between one particular nozzle and each of the hoppers.

In response to the Examiner's rejection, Applicant has herein amended line 5 of claim 1 to read "a passageway between each of said hoppers and the associated nozzle".

The Examiner further states on page 3 that "a sealing arrangement" is indefinite for it is unclear as to what arrangement applicant is referring, it is unclear whether the 'sealing arrangement' is a 'means for sealing' or a 'process for sealing'.

In response to the Examiner's rejection, Applicant has herein amended line 11 of claim 1 to read "a heat sealing arrangement for simultaneously sealing each of said packages".

The Examiner further states on page 3 that claim 5 is indefinite for it is unclear whether the specified dimension is for one package of the multi-compartmented container or for the multi-compartmented container itself.

In response to the Examiner's rejection, Applicant has herein amended claim 5 to read "The medication organizing system of claim 1 wherein each of said packages are preferably 1.625 inches wide and 2.75 inches deep."

The Examiner further states on page 3 that claim 7 lacks proper antecedent basis in the specification.

In response to the Examiner's rejection, Applicant has herein canceled claim 7.

The Examiner further states on page 3 in the Office Action mailed August 12, 2003 that claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Aylward (US 5,737,902).

Applicant respectfully traverses.

Table 1 below includes a claim chart presenting in tabular form a direct element-by-element comparison of the elements of Claim 1 of the present application to the teachings of Aylward (US 5,737,902). Claim 1 has been amended to place it in better condition for allowance. Each element in amended claim 1 is listed in the first column. Column 2 presents the comparison between the element in the present invention and the element in the prior art reference cited by the Examiner in the rejection under 35 U.S.C. 102(b).

**Table 1 – Element by element comparison of elements of Claim 1 of the present application to the teachings of Aylward (US 5,737,902):**

Element in Apellant's Claim 1	Difference or agreement with Aylward
A. A medication organizing system for manually preparing sealed packages of medication for their daily dosages comprising:	No. Aylward's "Apparatus and Method for Packaging Pills" is not a medication organizing system for <b>manually</b> preparing sealed packages of medication to assist individuals in organizing their daily dosages of medication. Aylward's apparatus and method is for "placing pills into a series of pill receptacles moved under the apparatus at a predetermined speed by a conveyor" (see Abstract, lines 1-3).
B. a plurality of hoppers in a linear arrangement;	The Merriam-Webster Dictionary defines a hopper as "a usually funnel-shaped receptacle for delivering material or any of various other receptacles for the storage of material". Aylward's specification states that "the tray 21 includes a plurality of openings 22 in the lower portion of the tray which allow the pills 16 to pass through" (Col. 6, lines 57-59 and Fig. 2). The openings 22 in Aylward's tray 21 are not hoppers but simply straight-through openings, which are not funnel-shaped, and therefore not hoppers (see Fig. 2). The tray 21 of Aylward better fits the definition of a hopper as it is used for storage of material as shown in Fig. 1. But there is only one tray in Aylward and not a plurality of trays in a linear arrangement.
C. a plurality of nozzles,	Yes. Aylward's apparatus includes tubes 40 which appear to control the direction of the pills 16.

D. each of said nozzles associated with one of said hoppers	No. Aylward's apparatus does not have each of the nozzles associated with one of the hoppers. Aylward's tubes 40 are all drawing material from the one tray 21 and therefore are not associated with one of the hoppers in a plurality of hoppers.
E. a passageway between each of said hoppers and the associated nozzle;	No. Aylward's apparatus does not include a hopper associated with each nozzle.
F. a manually operated hopper door for simultaneously opening said passageway between each of said hoppers and the associated nozzle;	Aylward's pins 35, 36 are not <b>manually operated</b> but are automatically operated by a controller 75 (Col. 7, lines 40-43). Since Aylward's apparatus does not have a nozzle associated with each hopper, there is no door for opening a passageway between each hopper and its associated nozzle. The pins 35, 36 in Aylward are part of the nozzle 40 mechanism. The Merriam-Webster Dictionary defines a nozzle as "a short tube with a taper or constriction used to speed up or direct a flow". The pins 35 and 36 of the upper 33 and lower 34 pin plates direct the flow of the pills 16 as they "act on opposed edges of the upper and lower pin plates 33, 34 to move the pins 35, 36 in and out of the tubes 40." (Col. 7, lines 34-36).
G. a multi-compartmented container,	No. Aylward does not claim the pill receptacles as an element of his packaging apparatus. Aylward's claims are limited to the packaging apparatus.
H. said multi-compartmented container comprising a plurality of packages in a linear arrangement,	No container as an element in Aylward.
I. said packages being of a size and alignment to allow each of said packages to be placed with one of said nozzles such that each of said packages can simultaneously receive a plurality of various sized pills from one of said hoppers; and	No. There are no hoppers in Aylward.

J. a heat sealing arrangement for simultaneously sealing each of said packages.	No. Aylward's "Apparatus and Method for Packaging Pills" is not a medication organizing system for preparing sealed packages of medication to assist individuals in organizing their daily dosages of medication. Aylward's apparatus and method is for "placing pills into a series of pill receptacles moved under the apparatus at a predetermined speed by a conveyor" (see Abstract, lines 1-3). Aylward's apparatus does not claim a sealing arrangement as an element of his apparatus for packaging pills. Although Aylward's disclosure includes a sealing means that is "inherent in the art of blister packaging" (Col. 1, lines 23-26), there is no sealing means inherent in a medication organizing system for manually preparing sealed packages of medication to assist individuals in organizing their daily dosages of medication.
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According to the Federal Circuit, "anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration" [W.L. Gore & Associates v. Garlock, Inc., 721 F.2d, 1540, 220 USPQ 303, 313 (Fed. Cir. 1983)]. Furthermore, to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either expressly or inherently (In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)).

As summarized in Table 1 above, several of the elements and limitations of claim 1 in the present invention are missing in Aylward, including the fact that Aylward's apparatus is not a medication organizing system for manually preparing sealed packages of medication (element A, Table 1). Aylward's apparatus does not include the claimed

element of “a plurality of hoppers in a linear arrangement” (element B, Table 1) nor does it include a nozzle associated with one of the hoppers (element D, Table 1). Aylward’s pins (element F, Table 1) are not manually operated. Furthermore, no multi-compartmented container is claimed as an element of Aylward’s apparatus (elements G-I, Table 1). Although a sealing means is inherent in the art of blister packaging (Col. 1, lines 23-26), there is no sealing means inherent in manual preparation of an individual’s medication needs. Blister packaging is not typically used for preparing an individual’s weekly medication needs. Blister packaging would imply that an individual would want to separately seal each pill, capsule, etc., that is intended for a given dosage time. This is impractical. An individual would prefer to have all of his medications easily accessible in one package that could be opened and accessed at once. Blister packaging is conducive to automated packaging of medications. Typically, all medications in a given blister pack are of the same size and shape. Medications for a given dosage time for an individual would include pills, capsules, tablets, etc., that would typically be of a variety of sizes and shapes and therefore be impractical for sealing in a blister package.

Since several of the elements of the present invention are missing in Aylward, the present invention is not anticipated under 35 U.S.C. 102(b) by Aylward’s claimed invention.

The Examiner further states on page 4 of the Office Action mailed August 12, 2003 that claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Benner, Jr. et al. (US 4,702,289).

Applicant respectfully traverses.

Presented below in tabular form are direct element-by-element comparisons of the elements of Claim 1 of the present application to the teachings of Benner, Jr. et al. (US 4,702,289).

**Table 2 – Element by element comparison of elements of Claim 1 of the present application to the teachings of Benner, Jr. et al., hereinafter Benner (US 4,702,289):**

Element in Apellant's Claim 1	Difference or agreement with Benner
A. A medication organizing system for manually preparing sealed packages of medication for their daily dosages comprising:	No. Benner's "Volumetric Filler for Pouch Machine" is not a medication organizing system for <b>manually</b> preparing sealed packages of medication to assist individuals in organizing their daily dosages of medication but rather is a mechanically driven system for filling pouches.
B. a plurality of hoppers in a linear arrangement;	Benner's filler does not include a plurality of hoppers but only one hopper. As stated in Col. 4, lines 3-4, "a hopper 58 is mounted on a frame member 59 and overlies the secondary plate 45". As previously stated in Table 1 above, the Merriam-Webster Dictionary defines a hopper as "a usually funnel-shaped receptacle for delivering material". As shown in Fig. 3, the secondary cups 49 of Benner do not act as hoppers and deliver material, but receive material from the single hopper 58.
C. a plurality of nozzles,	There are no nozzles in Benner. The Merriam-Webster Dictionary defines a nozzle as "a short tube with a taper or constriction used to speed up or direct a flow". Benner includes funnels 28 for feeding material to the pouches 15. There is no constriction or taper to control flow other than the normal taper of the funnel 28.

D. each of said nozzles associated with one of said hoppers;	No. Benner's filler includes only one hopper 38, which is associated with all of the funnels 28 as they rotate past the hopper 38.
E. a passageway between each of said hoppers and the associated nozzle;	There is only one hopper 38 associated with all of the funnels 28 so there is no passageway between <b>each</b> hopper 38 and funnel 28.
F. a manually operated hopper door for simultaneously opening said passageways between each of said hoppers and the associated nozzle;	No hopper door in Benner's filler. "The hopper 58 is spaced above the plate 45 so as to deposit a predetermined amount onto the plate 45" (Col. 4, lines 33-35). The plate 45 therefore picks up an excess of product and the "scrapers 63 funnel product into the secondary cups" (Col. 4, lines 36-37).
G. a multi-compartmented container,	Benner does not claim a multi-compartmented container as an element of his filler. As stated in Col. 3, lines 18-19 of Benner, "the present invention is directed to the filling apparatus."
H. said multi-compartmented container comprising a plurality of packages in a linear arrangement,	The non-claimed portion of Benner's filler includes a "continuous motion pouch form, fill, seal machine" (Col. 1, line 6) that forms a plurality of packages.
I. said packages being of a size and alignment to allow each of said packages to be placed with one of said nozzles such that each of said packages can simultaneously receive a plurality of various sized pills from one of said hoppers; and	Benner's packages are of a size and alignment to allow the packages 15 to be placed with the funnels 28 so that each of the packages 15 can receive product from the funnels 28.
J. a heat sealing arrangement for simultaneously sealing each of said packages.	The heat sealer 17 of Benner (see Fig. 1) is part of the continuous motion pouch form, fill, and seal machine and is not an element of the claimed volumetric filler.



As summarized in Table 2 above, several of the elements and limitations of claim 1 in the present invention are missing in Benner. Benner's volumetric filler is not a medication organizing system for manually preparing sealed packages of medication but rather a mechanically driven system (element A, Table 2). Additionally, Benner's volumetric filler does not include a plurality of hoppers (element B, Table 2), it does not include nozzles (element C, Table 2), there is not a one-to-one association of hoppers to nozzles (element D, Table 2), and no manually operated hopper doors (element F, Table 2). Benner's invention is limited to the volumetric filler and does not claim a container or sealing arrangement as elements of his claimed invention (elements G-J, Table 2).

Therefore, since several of the elements of the present invention are missing in Benner, the present invention is not anticipated under 35 U.S.C. 102(b) by Benner's claimed invention.

The Examiner further stated in the Office Action that claims 1, 5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosley (US 5,752,371) in view of Wilson, Jr. et al. (US 5,758,477) and Bentson (US 4,630,311)

Applicant respectfully traverses.

Claim 1 has been amended to place it in better condition for allowance. A claim chart has been prepared for amended claim 1 and is shown in Table 3. Each limitation in amended claim 1 is listed in the first column. Columns 2, 3, and 4 list the references cited by the Examiner in the rejection under 35 U.S.C. 103(a). Presented below in tabular form are direct element-by-element comparisons of the elements of Claim 1 of the present

application to the teachings of Mosley (US 5,752,371) in view of Wilson, Jr. et al. (US 5,758,477) and Bentson (US 4,630,311).

**Table 3 – Element by element comparison of elements of Claim 1 of the present application to the teachings of Mosley in view of Wilson, Jr. et al. (hereinafter Wilson) and Bentson.**

<b>Element in Appellant's Claim 1</b>	<b>Difference or agreement with Mosley</b>	<b>Difference or agreement with Wilson</b>	<b>Difference or agreement with Bentson</b>
A. A medication organizing system for manually preparing sealed packages of medication for their daily dosages comprising:	Yes. A bag loading system that could be used for manually preparing sealed packages of medication.	No. Not a manual system.	No. Just a zipper-lock bag chain.
B. a plurality of hoppers in a linear arrangement;	Yes. Mosley's shows two rows of elongated funnels with each row in a linear arrangement.	Yes.	No hoppers.
C. a plurality of nozzles,	Yes. The distal end 18 of the funnel 10.	No. No constriction to control flow, just a hopper 114.	No nozzles.
D. each of said nozzles associated with one of said hoppers;	Yes.	No nozzles.	No nozzles.
E. a passageway between each of said hoppers and the associated nozzle;	Yes.	No passageway. Only an open area between the hopper 104, bins 105, 108, 11, and discharge chute 114.	No passageway.

F. a manually operated hopper door for simultaneously opening said passageways between each of said hoppers and the associated nozzle;	No manually operated hopper door. Each of Mosley's funnels must be rotated 180 degrees upward and filled individually.	No manually operated door. An electronically controlled gate (106, 109, 112) is located at the bottom of each bin (105, 108, 111) and is controlled by a logic unit 118.	No hopper door.
G. a multi-compartmented container,	Mosley does not claim a multi-compartmented container but rather separate collecting bags.	No multi-compartmented container. Flights 117 on a conveyor 116 carry off the product.	Yes.
H. said multi-compartmented container comprising a plurality of packages in a linear arrangement,	No multi-compartmented container comprising a plurality of packages.	No multi-compartmented container comprising a plurality of packages.	Yes.
I. said packages being of a size and alignment to allow each of said packages to be placed with one of said nozzles such that each of said packages can simultaneously receive a plurality of various sized pills from one of said hoppers; and	No. Not a multi-compartmented container. Since Mosley uses separate packages, they must be sized to fit the nozzles, but adjacent packages within a multi-compartmented container do not have to be of a size and alignment to allow each of said packages to be placed with the nozzles as a group.	No packages, only flights on a conveyor.	No. Bentson's zipper-lock bag chain does not need to be of a size and alignment to allow the packages to be placed with nozzles.

J. a heat sealing arrangement for simultaneously sealing each of said packages.	No heat sealing arrangement.	No heat sealing arrangement.	No heat sealing arrangement. Bentson's bag chain includes "laterally spaced interconnected bags with each bag having individual releasably interlocking rib and groove elements which are laterally spaced on confronting inner faces at the top and with each being closed by a side seam at each side" (Abstract, lines 1-5). Each zip lock top of each bag must be sealed individually to obtain an effective seal on each bag in Bentson's chain of bags. This is unlike the sealing arrangement of the present invention, which seals all of the packages at once.
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It has been stated by the Federal Circuit Court that "when the patented invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination" [Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc., 21 F.3d 1068, 1072, 30

USPQ 2d 1377, 1379 (Fed. Cir. 1993)] and that “it is insufficient that prior art shows similar components, unless it also contains some teaching, suggestion, or incentive for arriving at the claimed structure” [Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934, 15 USPQ 2d 1321, 1323 (Fed. Cir. 1990).

The present invention makes it simple for an individual to manually prepare his medication dosages for a given period of a seven-day week. The multi-compartmented container element of the present invention along with the heat sealer allows an individual to quickly prepare sealed packages of medication.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art (MPEP §2143.01). It would not be obvious to combine the zipper-lock bag chain of Bentson with the bag loading device of Mosley for the reason that Mosley’s funnels 10 are individually pivotable and are required to be pivoted from a bag loading position (bottom 13 of funnel 10 positioned up, see Fig. 1) to a bag filling position (bottom 13 of funnel 10 positioned down, see Fig. 1). This makes it very impractical to combine a bag chain, such as disclosed in Bentson, with a bag loading device such as disclosed in Mosley. Using a bag chain on Mosley’s bag loading device would require turning all the funnels 10 on a given side of Mosley’s bag loading device upwards and making sure they were all aligned to receive each bag in the bag chain. To proceed to loading the bags with medications, the funnels 10 would all then have to be turned as a unit to the bag filling position without tearing the side seams 14, 15 (Bentson, Fig. 1) or any other portions of the bags in the bag chain. Mosley’s bag loading device, having each funnel 10 separately hinged (eyelet 9, rods 8a or 8b, Figs. 1

and 2), is designed for the separate funnels 10 to be turned individually by an operator. Turning the funnels 10 from the bag loading position to the bag filling position would place undue stress on a bag chain and the individual bags in the chain and could rip or otherwise compromise the bags. The proposed modification would thus render the bag loading device of Mosley unsatisfactory for its intended purpose of preparing a sealed, uncompromised bag of medications.

Furthermore, it would not be obvious to combine the electronically controlled gate of Wilson with the bag loading device of Mosley for the reason that Mosley's funnels 10 are pivoted and the collecting bags 4 filled individually, therefore a manually operated door for simultaneously opening the passageways between each of the hoppers and the associated nozzles would be of no advantage with Mosley's bag loading device. The advantage of a manually operated door can be understood by reference to Figs. 1 and 2 of the present application. As shown in Fig. 1, with the handle 36 of the hopper doors 34 closed, the hopper doors 34 provide a convenient receptacle (bounded by each hopper 30 and each door 34) to place the various medications. This conveniently allows an operator to place all the required medications for a dosage period into the separate receptacles corresponding to the days of the week. The operator therefore has a chance to check all of his daily medications before pulling the handle 36 thereby opening the doors 34 and allowing the medications to fall into the bags (see Figs. 12-14). In contrast, placing a door in each separate funnel 10 in Mosley's bag loading device would not provide the advantage of allowing an operator to check all of his daily medications. Separate doors in each of Mosley's funnels 10 would allow checking of medications for

only one day at a time. Furthermore, there is no suggestion in either Mosley or Wilson to combine a manually operated hopper door with a bag loading device to enable one to check their medications prior to discharging to a bag.

Additionally, amended claim 1 includes a heat sealing arrangement as an element of the present invention. None of the references cited by the Examiner in the rejection under 35 U.S.C. 103(a) include a heat sealing arrangement for simultaneously sealing each of the packages in a multi-compartmented container. Bentson's zipper-lock bag chain includes "a plurality of bags formed of a plastic film each having releasably interlocking rib and groove elements" (Col 5, lines 59-60). Mosley's bag loading device utilizes "the re-sealable plastic bag" (Col. 3, line 5). There is no suggestion in either Mosley or Bentson to combine a heat sealing arrangement with the bag chain of Bentson or with the re-sealable bag of Mosley. The proposed modification, a heat sealing element, would render the re-sealable bags of both Mosley and Bentson unsatisfactory for their intended purpose. (See MPEP §2143.01, "if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification") Using a heat sealing arrangement to seal the bags of Mosley or Bentson would result in the heat destroying the zipper-lock portions of the bags. Additionally, the heat sealing arrangement of the present invention is for simultaneously sealing each of the packages, and as described above, Mosley's bag loading device is not designed to accommodate a multi-compartmented container. Therefore, a heat sealing arrangement combined with the bag loading device of

Mosley would allow sealing of only one bag at a time, not simultaneous sealing of each of the bags.

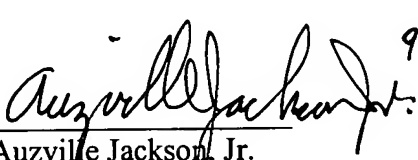


**IV. CONCLUSION**

Based on the amendment and cancellation of claims as presented herein, Applicant respectfully requests the reconsideration of this application and the timely allowance of the pending claims.

Should the Examiner require any further information by Applicant or Applicant's undersigned representative, the Examiner is invited to telephone the undersigned at the number set forth below.

Respectfully submitted,

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